

REMARKS

Rejections under 35 U.S.C. § 101

The Examiner's rejections under the provisions of section 101 are respectfully traversed because the Examiner is adopting the position of the dissent in the decision of the Board of Appeals in Ex parte Lundgren. Ex parte Lundgren, 76 U.S.P.Q.2d 1385, 1385, 2004 WL 3561262 (BPAI 2005). Applicant respectfully submits that the transfer of patented goods as instantly claimed recites statutory subject matter as found by the Board of Patent Appeals and Interferences. Withdrawal of this ground of rejection is respectfully requested.

Rejections under 35 U.S.C. § 102

The Examiner's rejections under the provisions of section 102 are respectfully traversed because the Examiner has failed to set forth in sufficient detail a rejection complying with the provisions of the applicable sections of the M.P.E.P. and

"For a prior art reference to anticipate in terms of Sec. 102, every element of the claimed invention must be identically shown in a single reference. *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 677, 7 U.S.P.Q.2d 1315, 1317 (Fed. Cir. 1988) These elements must be arranged as in the claim under review, *Lindemann Maschinenfabrik v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458, 221 U.S.P.Q. 481, 485 (Fed. Cir. 1984), but this is not an '*ipsissimus verbis*' test, *Akzo N. V. v. United States Int'l. Trade Comm'n.*, 808 F.2d 1471, 1479 & n.11, 1 U.S.P.Q.2d 1241, 1245 & n.11 (Fed. Cir. 1986), *cert. denied* 482 U.S. 909 (1987)." In re Bond, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990) *emphasis added*.

The each and every element test required for a rejection under section 102 has not been satisfied:

"The factual determination of anticipation requires the disclosure in a single reference of every element of the claimed invention. Moreover, it is incumbent upon the examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference." Ex parte Levy, 17 U.S.P.Q.2d 1461, 1462 (BPAI 1990) *emphasis added*.

Withdrawal of the grounds of rejection under 35 U.S.C. §102(b) is respectfully requested.

Rejections under 35 U.S.C. § 103

The Examiner's rejections under the provisions of section 103 are respectfully traversed because the Examiner has failed to set forth in sufficient detail a rejection complying with the provisions of the applicable sections of the M.P.E.P. and the Examiner has failed to make out a *prima facie* case of obviousness because the examiner has not pointed to reference or teaching that suggests or motivates the use of Applicant's term as now claimed prohibiting use of the patented goods to develop new intellectual property. "If examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent. *See In re Grabiak*, 769 F.2d 729, 733, 226 USPQ 870, 873 (Fed. Cir. 1985); *In re Rinehart, supra*." In re Oetiker, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992). Withdrawal of the grounds of rejection under 35 U.S.C. §103(a) is respectfully requested.

Rejections under 35 U.S.C. § 112

The Examiner's rejections under the various provisions of section 112 are respectfully traversed for reasons already of record. Applicant's amendment to the claims moots these rejections. Withdrawal of these rejections are respectfully requested.

Applicant respectfully solicits a notice of allowance.

Respectfully submitted:



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